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LAW PROFESSORS URGE STRONGER ENVIRONMENTAL IMPACT PROCESS IN RESPONSE TO HURRICANES KATRINA AND RITA – WORST CASE REVIEW AND COORDINATED PLANNING TOP THE LIST

Today, more than 200 law professors from across the country submitted written testimony to the House Resources Committee Task Force on the National Environmental Policy Act (NEPA). The recent hurricanes mark the need for strengthened environmental review, they stated, particularly for worst case analysis, planning decisions and cumulative impacts. "Katrina and Rita were Acts of God," said Professor Oliver Houck of Tulane University, a spokesman for the submission, "but it wasn't the Almighty who put casinos on the beaches of Mississippi and dredged canals to the foot of New Orleans. Congress passed NEPA to consider the consequences of things like that."

> [Contact information, the full submission to the House task force, a list of subscribing professors, and a supporting appendix, are attached below.]

Earlier this year the House Committee launched a task force on NEPA, organizing several hearings around the country. While industry representatives have complained of interference and delays in project approvals, environmentalists have asserted that the statute works and praised its venue for public participation. The law professors state that the environmental review process can be improved by administrative, not legislative, changes, and make seven such recommendations. Of these, Hurricanes Katrina and Rita give immediate importance to three recommendations.

Worst Case Analysis... which has all but disappeared in recent years, but could have brought greater attention to the adequacy of the New Orleans levee system, and to the threat from storm surges up the Mississippi Gulf Outlet. Worst cases happen, says the submission, and the time for ignoring them is over.

Planning Decisions... are the point at which full awareness of the risks and consequences are most important. The Administration, however, the submission points out, is proposing to exempt Forest Service Planning from NEPA review, and the Congress is considering bills to exempt the rebuilding of entire South Louisiana. "This marches in exactly the wrong direction", says Professor Pat Parenteau of Vermont Law School. "We need all the information on the table; the last thing we need is Don't-Ask, Don't-Tell."

Cumulative Impacts... such as those from dredging the protective marshes below New Orleans with several thousand miles of oil and gas canals, topped by even larger navigation canals such as the MRGO. "No one put the big picture together," says Professor Zyg Plater of Boston College Law School, "any more than they did for the strip development along the Gulf Coast beaches, now in ruins."

The submission is signed by 202 professors of Administrative, Environmental and Environmental Law and Policy, including Dr. Lynton Caldwell, who inspired the original law. They represent a combined total of over 2000 years in research and teaching, and more than 1000 years of law practice from every side of the spectrum, including federal and state agencies, private corporations and public and private law firms.

"Our basic message to the Committee," says Professor Houck, "is that the NEPA program has been successful, it does not need new law, but it could use stronger administrative rules and the will to make them effective. They could go a long way to avoid harm in the years ahead."

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Submission by Professors of Administrative, Environmental and Natural Resources Law and Policy to the United States House of Representatives Task Force On the National Environmental Policy Act, October 10, 2005

The undersigned more than 200 professors of Administrative, Environmental and Natural Resources Law and Policy respectfully submit the comments below to the House Task Force on Improving the National Environmental Policy Act (NEPA). These comments are based on a combined total of more than 2000 years of research and teaching within which the NEPA process has been a central principle. They are also based on over 1000 cumulative years of environmental and natural resource practice with federal and state agencies, private corporations and corporate law firms and public interest organizations, including by way of example: the Office of the United States Solicitor General; U.S. Department of Justice Environment and Natural Resources Division; U.S. Department of State; U.S. House of Representatives Resources Committee; U.S. Army Corps of Engineers; U.S. Environmental Protection Agency; California Office of the Attorney General; Colorado Department of Natural Resources; Vermont Department of Environmental Quality; American Chemistry Council; Martin-Marietta Corporation; Anaconda Corporation; public interest law firms Earth Justice Legal Foundation and National Wildlife Federation; corporate law firms Perkins Coie and Fulbright and Jaworski.

From this experience, we present three observations about the environmental impact statement process and seven recommendations for its improvement.

1. **Improving federal decisions: the role of alternatives.**

> "Thank God for NEPA, because there were so many pressures to make a selection for technology that might have been forced upon us and that would have been wrong for the country."
>
> — Admiral James Watkins, Secretary of Energy, testimony before the House Armed Services Committee, 1992[1]

NEPA was intended to improve federal decisionmaking.[2] The statutory vehicle for this improvement is a statement that compares the impacts of alternative courses of action.[3]

[1] Council on Environmental Quality, The National Environmental Policy Act: A Study of Its Effectiveness After 25 Years, at 13 (Jan. 1997) *available at* http://ceq.eh.doe.gov/nepa/nepa25fn.pdf (last visited Aug. 23, 2005).

The full examination of alternatives is the heart of the process.[4] Indeed, without this examination, it is hard to see what purpose the NEPA process serves. Most federal decisions, as most decisions in personal life, depend on knowing the range of alternatives available.

The examination of alternatives has been limited, by the courts, to a rule of reason.[5] No court has demanded the unreasonable, and several courts have allowed agencies to ignore alternatives that, at a later time, have proven quite viable.[6] Nor may a court presume to impose an alternative as preferable.[7] Full consideration is all the law requires.[8]

Although the consideration of alternatives is purely procedural, this requirement has produced widespread improvement in federal decisionmaking, large and small.

> —Programmatic impact statements on offshore leasing of oil and gas have identified, and avoided, coral reefs, spawning grounds and other sensitive marine areas;[9] regional statements on coal development and transmission corridors have identified, avoided, and mitigated for, impacts on important archeological and cultural resources;[10] and cumulative impact statements have allowed decisionmakers to plan for the effects of multiple activities, such as mining and residential development, on critical resource areas such as the Florida Everglades.[11] These reviews have led to the acceleration of several federal programs, and the deferral of others found unwarranted in the review process.[12]
>
> —Alternatives consideration has led to significant individual project changes as well. Indeed, in our experience, very few projects are *not* changed, and improved, by NEPA review. Appendix A, "The Role of NEPA Alternatives," identifies, from a cast of thousands, a random sampling of such project improvements, each one catalyzed by the NEPA alternatives requirement. They include, in these few examples:

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[2] 42 U.S.C. §4321; *see also Calvert Cliffs Coordinating Comm., Inc. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971); 40 C.F.R. §1500.1(c) (2005).
[3] 42 U.S.C. '§4332(c)(3), (e).
[4] *See* Sen. Comm. on Int. and Ins. Aff., National Environmental Policy Act of 1969, S. Rep. No. 296, 91st Cong., 1st Sess. ("These problems must be faced while…alternatives are still available."); *Natural Res. Def. Council, Inc. v. Morton*, 458 F.2d 827, 834 (D.C. Cir. 1972); 40 C.F.R. §1502.14 (2005).
[5] *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519 (1978)
[6] *Id.* (rejecting consideration of energy conservation measures).
[7] *Strykers Bay Neighborhood Council v. Carlen*, 444 U.S. 223, 226-27 (1980).
[8] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-56 (1989).
[9] *See,* U.S. Department of Interior Minerals Management Service Gulf of Mexico OCS Region, Gulf of Mexico OCS Oil & Gas Lease Sales: 2003-2007, chapter 4 (2002).
[10] *See, Kleppe v. Sierra Club*, 427 U.S. 390 (1976).
[11] *See Nat. Wildlife Fed'n v. Norton*, 332 F.Supp. 2d 170 (D.D.C. 2004).
[12] *See, e.g.*, Council on Environmental Quality, *supra* n. 1, at 9, 13.

- the relocation of highways to avoid community impacts
- the adoption of non-polluting production technologies
- the selection of less harmful construction source materials
- the reduction of herbicides in forest management
- contingency plans for spills, fires and other hazards
- redesign of dam and floodway projects

—Equally remarkably, many of these project alternatives, although resisted at the outset, save money for the federal government and private parties:

- NEPA review of the Alaska Pipeline resulted in its elevation above the permafrost, avoiding chronic and potentially catastrophic ruptures

- Abandonment of center channel dredging in the Atchafalaya Floodway project, in favor of a floodway alternative, saved an estimated $32 million per year in maintenance costs, in perpetuity[13]

- American Cyanamid ended up selling a product that it was previously discharging as waste

None of these administrative decisions were a simple matter of considering a proposal or no action (of doing A or non-A). They were, instead, questions of whether A could be done a better way, which might include B (e.g. elevated pipeline, floodway in lieu of center channel). Federal programs accord agencies wide discretion in choosing among options to manage, build, lease and permit. Limiting their inquiry to a particular proposal, take-it-or-leave-it, would limit the effectiveness of the statute. Indeed, it would defeat it.

2. NEPA and its costs: the sliding scale of impacts and burdens

NEPA takes time and costs money. But both can be exaggerated. While federal agencies undertake more than 50,000 actions a year potentially subject to the NEPA process, only one percent of these actions require an environmental impact statement.[14] This number (approximately 500 statements a year, spread among a dozen primary federal agencies)

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[13] Estimates derived from the annual maintenance costs of the Mississippi River-Gulf Outlet Channel ($22.1 million) and calculated proportionally by length (76 miles for the MRGO, 110 miles for the Atchafalaya Floodway). *See* Rex H Caffey & Brian Leblanc, *Closing the Mississippi River Gulf Outlet, Environmental and Economic Considerations*, *in* AN INTERPRETIVE TOPIC SERIES ON LOUISIANA COASTAL WETLAND RESTORATION (Coastal Wetland Planning, Preservation, and Restoration Act Outreach Committee ed. 2002).

[14] Robert G. Dreher, *NEPA Under Siege: The Political Assault on the National Environmental Policy Act* at 15 (Geo. Envtl. L. & Pol'y Inst., 2005).

has remained steady for decades.[15] Ninety-nine percent of federal actions are cleared with an often-minimal environmental assessment. Approximate time for preparation, two weeks to 18 months, approximate costs from $ 10,000 - 200,000.[16]

In practice, even the full EIS is gradated between large and mega projects, with a greater degree of scrutiny required for those that will generate greater impacts and public controversy.[17] Thus, even the relatively few full EISs may range in time from one and six years, and cost between $250,000 and $2 million.[18] Against these costs should be weighed the identifiable cost savings in project modifications discovered in the NEPA process, noted above. And, of course, the values of protecting other resources through avoidance and mitigation.

The most significant relief valve in the NEPA process is the "mitigated FONSI", through which federal agencies and private applicants reduce the footprint of their projects through avoidance and mitigation, below the "major federal action" level.[19] While controversial on the margins, this process does reduce environmental impacts and expedite federal decisions. The result is to ensure that only the "very major" federal actions, those that cannot be mitigated down, are treated to full NEPA review.

3. NEPA, public participation and litigation.

NEPA is the most imitated environmental program on earth. Nearly every country in the world has adopted a similar process.[20] And every such program faces the same resistance and challenges, largely because it exposes government and private applicant proposals to public view, criticism, and suggestions on alternative course of action. This form of public participation in government is, of course, at the heart of American democracy, the First Amendment, the Administrative Procedure Act and dozens of

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[15] Council on Environmental Quality, General Data for EISs Filed 1970 to 2004 (2004), *available at* http://ceq.eh.doe.gov/nepa/EIS_Statistics_1970_to_2004.pdf (last visited Aug. 21, 2005).
[16] Council on Environmental Quality, Modernizing NEPA Implementation at 65-66 (2003), *available at* http://ceq.eh.doe.gov/ntf/report/.
[17] *Id.*
[18] *Id.* Several federal studies, further, show NEPA to be rarely a primary cause of project delays. Other factors, both administrative and budgetary, play a more important role. The Federal Highway Administration, for example, found its delays to be rooted in funding and prioritization (32%) (all projects can't be first), community opposition (16%), project complexity (13%), and project scoping (8%), all rated higher than NEPA review. FHWA, Reasons for EIS Project Delays (Sept. 2000) (summary available at http://environment.fhwa.dot.gov/strmlng/eisdelay.htm).
[19] For more information on the environmental and administrative benefits of mitigated FONSIs see Bradley C. Karkkainen, *Toward a Smarter NEPA: Monitoring and Managing Government's Environmental Performance*, 102 COLUM. LAW REV. 903 (2002).
[20] China is the latest country to adopt environmental assessment procedures, enacting The Law of People's Republic of China on Environmental Impact Assessment in October 2002. *See* O'Melveny & Meyers, LLP, China Law & Policy Newsflash: Obligatory Environmental Impact Assessment at 1 (Dec. 10, 2002).

federal statutes providing for access to information, public hearings and citizen suit enforcement.

There can be no doubt these forms of citizen participation have been critical to NEPA's success. The government has no monopoly on good ideas, nor does it police its own compliance with environmental law.[21] Nor can the Congress, which has only limited and indirect control over agency actions and must rely on other mechanisms.

Citizen litigation is one such mechanism, and its role can be both exaggerated and under-appreciated. Lawsuits are a last resort and, in most cases, an avoidable one. Collaborative NEPA processes including environmental group stakeholders have succeeded in heading off litigation many times (including several identified in Attachment A); one problem is that many agencies do not use these processes, or do not use them well. Citizen suits, further, cost money, and large, fact-based NEPA cases can cost hundreds of thousands of dollars; few citizen groups have such resources. For these and other reasons, relatively few EISs are taken to court, historically about 100 a year.[22] Relatively few of these cases succeed in enjoining a project, even temporarily (10 to 20 per year).[23] Roughly one-third of all NEPA plaintiffs, furthermore, are state, local, and tribal agencies, private property owners, and business associations.[24] In a word, NEPA lawsuits are not sinking the ship.[25]

Litigation statistics, however, undertell the role of citizen enforcement of NEPA. The practical impact of NEPA litigation is not in court but, rather, in the potential for a legal challenge which serves to ensure that both environmental impacts (from environmental plaintiffs) and economic impacts (from industry plaintiffs) will be considered. Agency awareness of this potential is the practical enforcer of NEPA.

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[21] EPA rates EISs under §309 of the Clean Air Act (42 U.S.C. §7609 (2000)) but has no further authority; CEQ authority is limited to dialoguing among the agencies. 40 C.F.R. §1504.1 (2005).
[22] Robert G. Dreher, supra n. 14, at 15.
[23] *Id.*; Council on Environmental Quality, NEPA Litigation Surveys *available at* http://ceq.eh.doe.gov/nepa/nepanet.htm (last visited Aug. 21, 2005).
[24] *See* Council on Environmental Quality, NEPA Litigation Surveys *available at* http://ceq.eh.doe.gov/nepa/nepanet.htm (last visited Aug. 21, 2005).
[25] This said, data do show a recent upsurge of NEPA litigation based largely on agency failure to comply with three basic of the program: the consideration of alternatives, the consideration of cumulative impacts, and the recognition of a major federal action in the first place. *See* Lucinda Low Swartz, Esq., A Review of NEPA Cases 2001-2003 (Battelle Mem'l Inst. 2003) *available at* http://www.naep.org/NEPAWG/recent_cases.html (last visited Aug. 15, 2005). The grounds of the suits are not new: these tenets have been settled NEPA law since the 1970's. What is new is the slighting of these requirements, across a broad spectrum. The government's recent track record in defending these practices, in all circuits and before judges appointed by both political parties, is not good. *See* Jay E. Austin, et al., *A "Hard Look" at Judicial Decision Making Under the National Environmental Policy Act* (Envtl. L. Inst. 2004); William Snape III, John M. Carter II, *Weakening the National Environmental Policy Act: How the Bush Administration Uses the Judicial System to Weaken Environmental Protections* (Judicial Accountability Project, 2003). These are self-inflicted wounds.

4. Recommendations

On the basis of our professional experience with NEPA from many angles and over the course of its thirty-five year history, we offer the following considerations to the Committee.

(1) First, do no harm. Thirty-five years is not old. NEPA and its regulations have functioned rather well for over three decades, surprisingly so given their ambition. The endurance of a program that impinges on so many vested interests does not show arthritis, or affront the needs of the time. (The U.S. Constitution has been around for over 200 years with few amendments, some of them later repealed.) Our first recommendation, then, is that of cautionary medicine — first, do no harm.

This said, there is room for improvement, all of which can be accomplished, with the support of the Task Force, through the administrative process.

(2) Worst case analysis. For more than a decade, NEPA regulations required an explicit consideration of worst-case events. The requirement was then diluted to the point that major and potentially disastrous consequences can be minimized, and ignored. Recent catastrophes such as 9/11, Florida's unprecedented hurricane season of 2004, and now Hurricanes Katrina and Rita underscore the need to restore this inquiry front and center to the NEPA process. The time for slighting risk is over.

(3) Planning decisions. Recent administrative proposals, such as those of the US forest Service to exempt forest plans, threaten to sever NEPA from those major and strategic decisions that Congress clearly contemplated when enacting the statute. Of equal concern are legislative proposals to remove environmental review from planning decisions for the recovery of South Louisiana. Plans of this magnitude call for the full consideration of relevant facts and consequences. The Task Force should make clear that NEPA review is both essential and required in resource planning decisions.

(4) Legislative proposals. In a similar vein, while NEPA is directed to legislative proposals by federal agencies, legislation as major as recent energy and transportation bills are currently enacted without environmental review. We encourage the Task Force to consider a mechanism for impact assessment of major legislative proposals, perhaps done by the lead federal implementing agency or an independent congressional office.

(5) Citizen participation. More meaningful citizen participation in the NEPA process should be encouraged through several mechanisms, including participant funding and collaborative NEPA processes.

(6) Bias. NEPA statements have a large credibility problem. Few people consider the EIS an objective document, in part due to their preparation. No EIS should be prepared by a party with financial interest in the outcome of the decision. We also encourage the Task Force to support a mechanism for independent environmental review for a select group

of major-major projects, rather than relying on the proponent agency.[26] Credible EISs survive challenges; non-credible ones do not.[27]

(7) Alternatives. Federal regulations should re-emphasize the pivotal importance of this aspect of NEPA by requiring the identification of the least environmentally harmful (most environmentally beneficial) alternative, and the selection of this alternative unless there are stated, countervailing reasons of law or policy. Models for such a standard are already in force in other federal environmental programs,[28] and will afford a wide range of agency discretion while requiring agencies to justify decisions that do not fulfill NEPA's environmental quality goals.

Respectfully submitted,[29]

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[26] *See* Canadian Environmental Impact Assessment Act, *available at* http://laws.justice.gc.ca/en/c-15.2/text.html (last visited Aug. 21, 2005); Canadian Environmental Assessment Agency, Basics of Environmental Assessment, *available at* http://www.ceaa.gc.ca/010/basics_e.htm (last visited Aug. 21, 2005) (describing the role of independent environmental review panels).

[27] *See* Jay E. Austin, et al., *A "Hard Look" at Judicial Decision Making Under the National Environmental Policy Act* (Envtl. L. Inst. 2004); Defenders of Wildlife, "Weakening The National Environmental Policy Act: A Report of the Judicial Accountability Project," 2003.

[28] *See, e.g.*, Department of Transportation Act, §4(f), 49 U.S.C. §1653(f) (2000); National Oceanic and Atmospheric Administration's Coastal Zone Management Act Consistency Requirements, 15 C.F.R. §930.53 (2005).

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Appendix A

The Role of NEPA Alternatives

Pacific Coast

Mount Hood Highway, Oregon. Mount Hood Highway is a 35-mile stretch of road winding through the Cascade Mountains that passes through critical habitat regions and culturally-important historic areas. In the early 1990s, the Oregon DOT began expanding the road to accommodate growing tourist and recreational traffic. In 1994, however, the Federal Highway Administration intervened and indicated that the NEPA review process was needed before any additional expansion could occur. The Oregon DOT began an EIS "master plan" for the entire stretch of road, rather than individual segments, which yielded the "Mt. Hood Corridor Study" in 1996. The study involved a large advisory committee representing community groups as well as development advocates. The group found that widening the segment alone would not alleviate congestion in the area, and recommended alternative solutions to mitigate the traffic. These included shuttles, real-time cameras to advise travelers of road conditions, and increased enforcement measures like parking fees to encourage off-peak visits. Their analysis led to the development of more viable and cost-effective solutions to the traffic problem.

Biological Control of the Gypsy Moth, Oregon. In the mid-1980's, the Pacific Northwest was inundated by a swarm of Gypsy Moths that severely threatened forest health. In response, the Department of Agriculture (USDA) proposed to spray the town of Salem, Oregon with carbaryl, a pesticide known to cause chronic and acute toxic effects in humans. A group of concerned citizens suggested the use of a biological insecticide called B.T. (bacillus thurogiensis) instead of aerial chemical spraying. The USDA refused to consider the alternative in its EIS, and the citizen group challenged the USDA's decision in court. In response to this challenge, the USDA ultimately chose to use B.T. instead of carbaryl. The following year the agency issued a report noting that the B.T. program had achieved the best Gypsy Moth control levels in the history of the agency, without exposing Salem to potentially toxic chemicals.

Channel Islands National Park, California. Santa Rosa Island was purchased from a cattle company by the National Park Service in 1986. The Park Service continued to allow grazing on the small island even after it was incorporated into Channel Islands National Park. A decade of overgrazing eventually produced a number of environmental problems including the degradation of water quality in the island's streams. In 1995, the Park Service initiated a study of water quality on the island as part of its EIS for the Santa Rosa Management Plan. The study found that of the seven stream reaches that were subject to year-round cattle grazing on the island, six were considered "nonfunctional" and one was rated "at-risk." In its Final EIS in 1998, the National Park Service selected the environmental-preferable alternative and eliminated cattle grazing on the island. Shortly, the park saw dramatic improvements in riparian vegetation cover and water quality. The Park Service completed a follow-up study in 2004, and the

research team found that all six reaches that were rated "nonfunctional" in 1995 had completely recovered, and water quality on Santa Rosa Island has improved dramatically.

North Spokane Freeway, Washington. Transportation planners had been considering construction of a North-South freeway through Spokane, Washington for several decades when they finally proposed a plan in the early 1990s. The North Spokane Freeway was designed to improve traffic movement in Spokane, as well as improve access and circulation in the downtown area. However, the routes considered in the draft EIS crossed numerous residential districts, and would have required the displacement of hundreds of families. The Washington State Department of Transportation (WDOT) held several public meetings to receive feedback on its proposal, and at these meetings numerous individuals and community groups expressed concerns about the proposed routes' impacts on the neighborhoods they traversed. As a result of this feedback, WDOT went back to the drawing board, and proposed a new eastern route along a seldom-used railroad right-of-way. This new route made use of several industrial brown fields instead of residential zones, and consequently required many fewer family displacements. WDOT selected the eastern route as its preferred alternative in the Final EIS, and construction is currently underway. Without NEPA, Spokane residents would not have had a voice in planning the North Spokane Freeway, and WDOT would have displaced hundreds of families unnecessarily.

Agent Orange, Pacific Northwest. Beginning in the early 1970s, the Forest Service sprayed recent clear-cuts with Agent Orange, a potent mixture of the herbicides 2,4-D and 2,4,5-T, to kill undesirable plants that competed with valuable Douglas fir seedlings. A citizen movement in Oregon led to the emergency suspension of the dioxin-contaminated 2,4,5-T in 1979, but aerial spraying of the other half of Agent Orange, 2,4-D, contained unabated. In 1984, in response to citizen lawsuits, a Federal court halted herbicide spraying by the Forest Service in Oregon and Washington until the agency addressed its impacts and alternatives. The agency decided to write an entirely new EIS for its vegetation management program. It convened a coalition of tree planters, rural residents, scientists, and environmentalists to work with the Forest Service to write an alternative that emphasized effective, nonchemical prevention and control of unwanted vegetation. The group's report identified some simple, effective alternatives. For instance, two-year-old trees could be planted in clear-cuts, as opposed to the one-year-old seedlings then used, since they were more likely to survive. The previously unwanted red alter tree did not have to be removed at all because it was found to restore nitrogen to depleted soil, helping rather than competing with the planted seedlings. This "least herbicide" option was selected by the Forest Service as the best alternative, reducing both costs and pesticide risks in Pacific Northwest National Forests.

Mountain West

Customs Service Facilities on the Rio Grande, Texas. When the U.S. Customs Service proposed a major expansion of a border station to provide import lot and docking facilities on the Rio Grande near the Juarez/Lincoln International Bridge between the

U.S. and Mexico, the General Service Administration (GSA) undertook planning for the project and began preparation of an EIS examining six different ways to build the facilities. GSA also examined a "no action" alternative, as required by CEQ regulations. The projected costs for building the facilities ranged from $27 million to $54 million. However, time and motion studies conducted for EIS purposes showed that backups at the existing facilities resulted from too few inspectors rather than too few docks. Computer modeling for the EIS indicated that with new facilities already planned or under construction in the vicinity, there would be no need for the facility until at least sometime after 2020. As a result, the "no action" alternative was selected and the money projected for use on the project was saved.

Glennwood Canyon Interstate Constructon, Colorado. Initial plans for I-70 through Greenwood Canyon in Colorado included blasting through a cliff, and channeling the Colorado River. However, public concern about the project led the Colorado Highway Commission to form a Citizens Advisory Committee of design and ecological professions to assist with the planning process. The group was active throughout the NEPA review process until the highway's completion in 1992. The result is a 12.5-mile stretch of highway with lower environmental impacts—thanks in large part to NEPA's procedural protections. The final design preserves the natural topography and maintains the integrity of the Colorado River and side rivers entering it. Features such as four rest stops, a bike and jogging path along the length of the canyon, a boat launch, a raft drop allowed for canyon recreational use by tourists and regional residents. NEPA helped engineers to understand and incorporate environmental design concepts into the project. Indeed, the Glenwood Canyon project has received more than thirty awards for innovative design and environmental sensitivity. The American Society of Civil Engineers awarded the project the Outstanding Civil Engineering Achievement Award in 1993.

Los Alamos Fire Management Plan, New Mexico. When the Los Alamos National Laboratory (LANL) completed a draft site-wide EIS in the mid-1990s, it did not contain an analysis of the risks to the facility posed by wildfires. Under the initial screening methodology, threats posed by wildfires did not seem plausible enough to be considered. Recognizing the wildlife information in the draft EIS, a forester at the nearby Santa Fe National Forest focused the agency's attention on the deficiency. In response, LANL's final EIS contained a comprehensive analysis of wildfire threats, including a hypothetical scenario that closely matched the events that took place in the summer of 2000 when the Cerro Grande Fire burned about 9,000 acres of the LANL site. In response to the threats identified in the final EIS, the agency had taken measures to reduce fire risks to certain key facilities. These mitigation measures proved effective when the fire struck in 2000. Furthermore, the agency found the EIS to be an extremely useful tool in developing an appropriate response during the fire itself.

Midwest

Highway 26, Wisconsin. Highway 26 is a regional road that runs through south-central Wisconsin, connecting Illinois to Wisconsin's Fox River Valley. In order to address increasing traffic from trucks and regional drivers, Wisconsin's DOT (WisDOT)

proposed the construction of a bypass. The 48-mile corridor encompasses three communities, and NEPA provided the process for stakeholders to engage in discussions about the project development. Project manager James Oeth noted, "NEPA forced us into providing alternatives that were representative of the interests from all agencies involved." "Without NEPA, we would have just asked what the shortest distance was and built the road through there," he added. As the project nears its final stages of preparation, significant consensus exists between the local residents and transportation officials because of the opportunity for early public involvement. Another important benefit of NEPA was the Highway 26 Corridor Planning Process, a new supplementary planning process to coordinate local planning efforts. "We talked out problems and came up with solutions that were agreeable to most participants," said Greg Davis, a Jefferson County Supervisor. "The NEPA process has saved us a lot of money, and mitigated many of the externalized consequences of a freeway expansion project," he added.

Highway 23, Michigan. Throughout the early 1990's, US-23 had severe traffic congestion problems. The Michigan DOT (MDOT) had long been interested in building a four-lane freeway running parallel to the existing highway to relieve some of this congestion. Local groups proposed making upgrades to the existing highway rather than building a new one. Initially, these groups were ignored by decision-makers. A Draft EIS was published in 1995. At that time, the only choices listed were to build the new freeway or to do nothing. The Federal Highway Administration rejected the proposal, and directed MDOT to upgrade the existing US-23 two-lane highway or study the creation of a less-damaging alternative. On further review, the FHWA recommended the upgrade alternative suggested by community groups, including passing lanes, traffic signal improvements, and turn lanes. In the end, the communities will be spared the impacts of another new highway, and the government will save $1.5 billion in construction costs.

South

American Cyanamid, Georgia. In 1971, one year before the Federal Water Pollution Control Act amendments vested water permitting responsibilities with the EPA, American Cyanamid announced plans to expand its plant on the Savannah River in Georgia, leading to significant discharge of sulfur and other chemicals. For this expansion they were building a new dock in navigable waters, which required authorization from the U.S. Army Corps of Engineers. This authorization invoked NEPA review. During that review, and at the urging of state agencies and local citizens concerned about water quality impacts from the discharge, American Cyanimid discovered an alternative process in Japan that recycled the chemicals, reprocessed them as a vendible product, and led to zero discharge. In late 1972, the company issued a press release announcing its adoption of this alternative, eliminating these chemicals from its discharge. While the same result, today, might result from the application of the Clean Water Act, the result in this case was produced by NEPA's requirement for the consideration of alternatives.

Lake Pontchartrain Shell Dredging, Louisiana. Lake Pontchartrain is the second largest interior lake in the United States and, historically, the source of much of the famed

seafood cuisine of the City of New Orleans. In the 1940s, private companies began dredging the bottom of Lake Pontchartrain for clam shells to be used as roadbed material. The elimination of bottom life and the pollution of the Lake by sediments followed, and by the 1970's the Lake wad dead as a seafood producer and posted off-limits for swimming. The dredging continued, now under federal Clean Water Act Section 404 permitting, which invoked the application of NEPA. The NEPA process revealed the availability of alternative roadbed material at a cheaper price and with minimal impact, crushed limestone. After several legal proceedings, the State chose this alternative for its roadbed material, ending the shell dredging in the Lake. Lake Pontchartrain is now renewed as a public resource with increased fishing and crabbing; the water quality is now generally fit for swimming. Roadbeds are built with crushed limestone. The NEPA alternative has worked for all concerned.

Atchafalaya Floodway, Louisiana. The Atchafalaya River is one of the most productive ecosystems in North America. It is also the site of the Atchafalaya Floodway project, designed to protect South Louisiana from flooding by diverting flood-stage waters from the Mississippi River directly to the Gulf of Mexico. Originally authorized in 1928 and managed by the US Army Corps of Engineers, the floodway authorization included land rights within the floodway. Two things happened: under pressure from private landowners, the Corps sought authorization for a mega-channel that would drain the floodway, and private development began moving in with houses, churches and significant investment. NEPA review of the project began in 1971 in a cooperative effort with other federal agencies and citizen groups. During the review the Corps recognized that its project as designed would require huge and recurring dredging costs, and would only encourage further development of the floodway, impeding its use at flood time. With support of the State Governor, landowners and environmentalists, the Corps proposed a project alternative that purchased development rights from landowners (retaining their mineral and timber rights) and abandoned the mainstream dredging. Congress authorized the project alternative, which is now being implemented today. Through a NEPA alternative, flood control and natural resources purposes were reconciled.

I-840 North, Tennessee. In 1996, FHWA and the Tennessee Department of Transportation (TDOT) issued a draft EIS analyzing potential impacts of building the northern half of an outer beltway around Nashville, I-840 North. The project was originally intended to ease traffic congestion, but studies completed just before release of the Draft EIS indicated that the proposed highway would not resolve congestion problems. Consequently, FHWA and TDOT changed the primary justification for building the road to promoting growth and economic development. Community groups brought the problem to TDOT's attention, and the agency decided to hire a consultant to examine alternative ways to promote growth and economic development. In February 2003, TDOT decided to scrap the project because it "did not appear to meet a documented transportation need and lacked meaningful participation from local planners." Thus, as a result of NEPA procedures, TDOT decided to save taxpayers more than a billion dollars, and focus its efforts "where traffic, growth and other factors justify transportation improvements."

Cache River/Bayou DeView, Arkansas. The Cache River Basin comprises 2,030 square miles of bottom lands in northern Arkansas and southern Missouri. By the Flood Control Act of 1950, Congress authorized the Army Corps of Engineers to channelize the basin. In 1969, a general design for the project was completed. It called for clearing, realigning, enlarging, and rechanneling approximately one hundred forty miles of the Cache River for flood control and drainage purposes at a cost of roughly $43 million. Numerous environmental groups suggested alternatives to the proposed action, but the Army Corps refuse to consider any of them. The groups challenged this decision in court. After considerable controversy, a reduced channelization option was selected and the area became a national wildlife refuge. In 2004, an ivory-billed woodpecker, a bird long-believed extinct, was discovered in the Cache River Basin.

East Coast

Route 403, Rhode Island. According to Rhode Island Department of Transportation (RIDOT), the idea behind relocating Route 403 and building a new 4-lane highway was to alleviate severe congestion by taking traffic off an otherwise local road. Due to a variety of public concerns RIDOT made extensive efforts to involve the public early in the design process. In addition to approaches mandated by NEPA, they held several briefings for the town council. In one of the town council meetings, the suggestion was brought up to include a culvert for small-animal crossings. "I probably wouldn't have thought of that on my own," said Peter Healy, a RIDOT project engineer. Building culverts significantly lessened damage to wetlands, and minimized the impacts of the project. This and other alternatives generated through the NEPA process significantly reduced the environmental consequences of the project. Wetland impacts, for example, were cut in half. Healy observes, "I've noticed there has to be a big concentration on ecological issues, because that's what the public wants. But if NEPA isn't a requirement, someone may decide not to do it."

Department of Energy Nuclear Cleanup Policy, Washington D.C. The Department of Energy has made extensive and effective use of programmatic and site-wide NEPA reviews in determining how best to transform its nuclear weapons complex to appropriate post-Cold War functions and fulfill its environmental cleanup obligations. As Secretary of Energy, Admiral James Watkins initiated a reinvigorated NEPA process at DOE and said it was key to the decision to defer selection of a costly tritium production technology. "Thank God for NEPA," Admiral Watkins told the House Armed Services Committee in 1992, "because there were so many pressures to make a selection for a technology that might have been forced upon us and that would have been wrong for the country."

Route 50, Virginia. The segment of Route 50 passing through Aldie, Middleburg and Upperville, VA, at the foothills of the Blue Ridge Mountains is a classic main street in a small town. However, it began to suffer from problems of speeding, aggressive driving, and congestion during rush hours at one intersection. Virginia's Department of Transportation (VDOT) came up with the conventional solution; expand the road into a four-lane, divided highway with bypasses around the small towns. The citizens, however, had another vision. They took the opportunity for public involvement

afforded by the NEPA process and ran with it. Five local citizens' organizations came together in 1995 to create the Route 50 Corridor Coalition to seek alternatives to VDOT's plan. The Coalition found that a four-lane highway would only increase speeding and local businesses would suffer if bypasses redirected traffic around the towns. Though its own research, it came up with an alternative "traffic calming" plan that would solve the problems on the roadway, promote local business, protect the rural and historic character of the area, and cost much less than conventional highway expansion. Instead of wider roads that bypassed the town, the solution included: entranceway features at the edges of the towns, planted medians, raised intersections, changes in pavement for parking areas, and guardrails made from natural material. In addition to their aesthetic advantages, these additions will reduce speeding and promote pedestrian safety. One of the most innovative sections of the design is a network of roundabouts replacing the conventional signalized intersection at the junction of Routes 50 and 15. The traffic calming design received official approval from VDOT in March 2003. Unprecedented public process and NEPA review has produced an innovative, less expensive solution.

Plum Island Wind Farm, New York. The Department of Agriculture (USDA) proposed a project to construct a small wind farm to generate electrical power for a research facility off the eastern shore of Long Island. After conducting reconnaissance-level field studies, an Oak Ridge National Laboratories team prepared an evaluation of potential impacts to resident and migratory birds, and a high probability of significant impacts from birds colliding with the wind turbines. In addition, preliminary economic analyses revealed that substantial costs had not been considered and that other alternatives, involving combinations of diesel power and wind generation, appeared to be more economically attractive. USDA decided to cancel the project, determining that other actions could be taken to achieve some, if not all, of their initial objectives (i.e., reduced energy consumption, lower utility costs, and protection of ecological resources) without constructing new generating capacity. Because the process was initiated early, USDA was able to protect sensitive ecological resources on Plum Island while finding a solution for the electrical energy needs of a remote federal research facility and project proponents avoided major expenditures on unnecessary facilities.

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